IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

A.H., a minor, by her next friend and mother, TRACEY HANDLING, Plaintiffs	:	**Civil No.**
v.	:	
MINERSVILLE SCHOOL DISTRICT; CARL MCBREEN, in his official capacity as Superintendent of the Minersville School District; and JAMES YACOBACCI, in his official capacity as Principal of Minersville Elementary School Defendants.	:	**JURY TRIAL DEMANDED**

COMPLAINT

AND NOW COMES Plaintiff, A.H., a minor, by her next friend and mother, Tracey Handling, by and through her undersigned counsel, Jason D. Schiffer, Esq., of the law firm of Cohen, Feeley, Altemose & Rambo, P.C., brings this Complaint against Defendants Minersville School District; Carl McBreen, in his official capacity as Superintendent of the Minersville School District; and James Yacobacci, in his official capacity as Principal of the Minersville Elementary School and in support thereof, avers as follows:

INTRODUCTION

1. A.H. is presently an eight year-old girl who is in second grade at Minersville Elementary School in Schuylkill County, Pennsylvania. She is transgender girl who has been diagnosed with Gender Dysphoria by medical professionals. Since kindergarten in the 2014 school year, A.H. has been attending Minersville Schools as a female, using a female name, dressing as a female, and presenting herself to her peers in every aspect of her life as a female. The school district was made aware of A.H.'s desire to dress and be

treated as a girl and to be referred to by using female pronouns. The school district was made aware of A.H.'s gender dysphoria diagnosis in January 2015. Since the start of the 2014 school year, the Minersville School District has been systematically discriminating against A.H. on the basis of her gender and sex, in violation of the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972. The school district has changed their bathroom use policies several times, at times forcing A.H. to, *inter alia,* use the men's restroom, use a separate "unisex" restroom, and wait while her classmates used the restrooms and after her classmates were finished they singled her out and forced her to use the men's restroom alone. Defendants repeatedly referenced that they were merely following school policy that a student may only use the restroom which corresponds to the sex listed on the child's birth certificate, when no such policy ever existed. A.H. repeatedly requested accommodations in the form of being permitted to use the restroom that corresponds to her gender identity. A.H.'s mother was told that the school could not accommodate A.H. because of the privacy concerns of the other students. Defendants said that they felt they were accommodating A.H. to the fullest by providing unisex bathrooms. A.H. was the only student in the school required to use the unisex bathroom. Defendants told A.H.'s mother that they needed to protect the other students from her daughter, who was a seven year old child at the time.

In May of 2016, A.H. filed a complaint of discrimination with the Pennsylvania Human Relations Commission against the Minersville School District. At the end of May 2016, pursuant to the U.S. Department of Justice, Office of Civil Rights *Dear Colleague* letter which was issued on May 13, 2016, the Minersville School District changed their practice and permitted A.H. to use the bathroom facility which corresponds to her gender identity for the last week of school. The School district refused to create any policy to address this issue, and indicated that they would decide these issues on a case-by-case basis. Since that time, the Minersville School District has engaged in retaliation against A.H. by repeatedly failing to provide A.H. with the proper evaluation in order to formulate an Individualized Education Program (IEP) which would properly address all of A.H.'s educational needs. Defendant Yacobacci further engaged in an unprofessional course of conduct towards Tracey Handling, including loudly screaming at her in front of A.H. and school employees to get out of his school, telling her that all she does it cause trouble. It is believed that Defendant Yacobacci reported the family to Children & Youth Services to investigate an injury to A.H. without any basis for the complaint and after being given a written explanation of how the injury occurred.

The actions of all Defendants have deprived A.H. of her right to equal dignity, liberty, and autonomy by branding her as different, less valuable, and second-class, all because of her gender identity.

PARTIES

2. Plaintiff, A.H., is presently an eight year-old girl who is currently in second grade at Minersville Elementary School.

3. Plaintiff, A.H., is a girl who is transgender, meaning that she was assigned the sex of male at birth but she has a female gender identity.

4. Plaintiff, A.H., was diagnosed while in kindergarten as having gender dysphoria, which is a serious medical condition, recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013)

(DSM-V), and by other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

5. Gender dysphoria refers to clinically significant distress that can result when a person's gender identity differs from the person's sex assigned at birth. If left untreated, gender dysphoria may result in psychological distress, anxiety, depression, and even self-harm or suicidal ideation.

6. Tracey Handling is A.H.'s mother, and sues as her next friend.

7. Defendant, Minersville School District ("MSD"), is a public school district in Schuylkill County, Pennsylvania. It is organized under the laws and constitution of the Commonwealth of Pennsylvania. It has a principal place of business located at 300 N. 5th Street, Minersville, Schuylkill County, Pennsylvania 17954. The Minersville School District at all times hereto functioned, under color of state law, as the executive administrative agency responsible for the orderly administration of the public schools within the Minersville School District, including, but not limited to the Minersville Elementary School, and was the entity responsible for institution of administrative rules regarding the conduct of the day-to-day business of the school within the MSD, including creation of policy and procedure, and the implementation of the same.

8. Defendant Superintendent Carl McBreen is the Superintendent of MSD and is sued in his official capacity. At all times relevant hereto, Superintendent McBreen acted within the course and scope of his employment as an employee, agent, and representative of MSD. In such capacity, he implemented discriminatory the policies and practices described herein.

9. Defendant Principal James Yacobacci is the current Principal of Minersville Elementary School within the MSD and is sued in his official capacity. At all relevant times herein, Principal Yacobacci acted within the course and scope of his employment as an employee, agent, and representative of MSD. In such capacity, he implemented discriminatory the policies and practices described herein.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 because this civil action arises under the laws of the United States, specifically 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

10. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §1343, which gives District Courts original jurisdiction over (a) any civil action authorized by law to be commenced by any person to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunities secured by the Constitution of the United States by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; and (b) any civil action to recover damages to secure equitable or other relief under any Act of Congress providing for the protection of civil rights.

11. This is an action to redress deprivation of Plaintiff, A.H.'s, constitutional rights under the Fourteenth Amendment pursuant to 42 U.S.C. §1983 and to redress a hostile educational environment of sexual harassment pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.,* as more fully set forth herein.

12. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(1) and (2), since the events giving rise to the claims set forth herein occurred within the jurisdiction of this Court, and all Defendants reside within the Commonwealth of Pennsylvania, and the Minersville School District is within the Middle District of Pennsylvania.

ALLEGATIONS APPLICABLE TO ALL CLAIMS

10. A.H. was born and raised in the Schuylkill County area, she is the third of six children in her family and she lives with her siblings and her parents.

11. A.H. started treatments with a pediatric psychologist in April 2012, which continued and included, at times, her siblings and her parents.

12. Treatments initially focused on discussing gender identity and identifying ways to help A.H. and her family to navigate the ways to express her preferred gender within the home, school, and community settings.

13. After numerous appointments, including family therapy and group therapy, A.H. was diagnosed with Adjustment Disorder, NOS on 07/01/2014 to reflect her adjustment to her gender preference.

14. In or around July 2014, Tracey Handling, informed Defendant MSD about A.H.'s gender transition.

15. Since the start of the 2014 school year, Plaintiff A.H. has presented as a female student in all aspects of her life, including her name and her attire.

16. Plaintiff, A.H. lives every aspect of her life, in and out of school, consistently and with her gender identity different than her sex assigned at birth.

17. Since the start of the 2014 school year, Plaintiff A.H.'s classmates have known her to be a female student.

18. In or around July 2014, Tracey Handling presented an accommodation request to Defendant, MSD, to allow Plaintiff, A.H., to use the women's restroom.

19. Defendant Superintendent McBreen told Tracey Handling that the school could not accommodate A.H. due to concerns over the privacy rights of other students.

20. Defendant, MSD, agreed to provide unisex bathroom for A.H. to use.

21. While all students, presumably, had the option to use the unisex bathroom, only A.H. was forced to use the separate facility.

22. Defendant Superintendent McBreen told Tracey Handling that "this was all new" to them and that they feel that they are accommodating A.H. to the fullest by providing a unisex bathroom.

23. Bathroom access was not a significant issue for A.H. while in the classroom during the 2014-2015 school year because the kindergarten classroom had a single bathroom for use by the students.

24. Bathroom access became a larger issue for A.H. when outside of the classroom, especially on field trips.

25. A.H.'s pediatric psychologist provided a secondary diagnosis of Gender Dysphoria (formerly known as Gender Identity Disorder in DSM-IV) on 01/27/2015.

26. In or around May 2015, Defendant, MSD, denied the accommodation request and forced A.H. to use the men's restroom while on a school field trip.

27. While on the field trip in or around May 2015, Plaintiff A.H. was singled out and made to wait to use the restroom while all of the other students in the class used the restroom facilities.

28. After all of the male students in Plaintiff A.H.'s class were finished using the restroom, the bathroom was searched and cleared and then Plaintiff, A.H. was forced to use the men's restroom while her classmates waited.

29. This action singled out Plaintiff, A.H., and made her classmates ask her why she was using the boy's restroom, since she was a girl.

30. A.H. went home upset and was asking her mother why she was singled out and forced to use the men's bathroom on the field trip.

31. Tracey Handling emailed A.H.'s teacher, Mrs. Schuster and inquired about why A.H. was singled out and forced to use the men's bathroom on the field trip.

32. Mrs. Schuster responded that she was following what Defendant Principal Yacobacci told her to do.

33. Tracey Handling verbally complained to Defendant Principal Yacobacci that A.H. was singled out and forced to use the men's bathroom on the field trip.

34. Defendant Principal Yacobacci informed Tracey Handling that they were just following Defendant MSD's policy and procedure that a child must use the restroom that corresponds to the sex listed on each child's birth certificate.

35. Defendant Principal Yacobacci, referring to Plaintiff, A.H., told Tracey Handling that it is his "job to protect all of the students from her".

36. There is no indication that Plaintiff, A.H., engaged in any behavior or threatened any behavior that would place any other student in jeopardy because of her use of the bathroom.

37. Tracey Handling told Defendant Principal Yacobacci that he made A.H. a target and now other classmates are questioning her about why, as a girl, she was using the men's bathroom.

38. Defendant Principal Yacobacci told Tracey Handling, "You and your husband chose this for [A.H.]".

39. Tracey Handling asked Defendant Principal Yacobacci to communicate with her about these policies so that she can effectively prepare A.H. for what to expect.

40. Defendant Principal Yacobacci told Tracey Handling that nothing needs to be communicated to her because he is following school policy as it reads "male" on A.H.'s birth certificate.

41. Tracey Handling told Defendant Principal Yacobacci that he is discriminating against A.H. by making her use the men's restroom, by his comments about her birth certificate, and by making her a target and singling her out while the class uses the restrooms.

42. While Tracey Handling was expressing her concerns about A.H. discriminatory treatment during the field trip, Defendant Principal Yacobacci asked her if she received the chaperone paperwork and that if she was so worried about A.H. wanting to use the girl's bathroom, she should have chaperoned the trip, because he has to follow school policy.

43. Again, in or around July 2015, Tracey Handling again presented a request to Defendant, MSD, to allow A.H. to use a women's restroom while at school.

44. In or around July 2015, Defendant Superintendent McBreen and Defendant, MSD, denied the request to allow A.H. to use the women's restroom telling Tracey Handling that this was not an option at the time.

45. Superintendent McBreen told Tracey Handling that even if they were to consider allowing A.H. to use the women's restroom, he would have to write a letter to all of the parents in the school to see what their response would be.

46. Superintendent McBreen informed Tracey Handling that he felt there would not be a lot of acceptance.

47. Superintendent McBreen asked Tracey Handling, 'Are you ready for all of the backlash of this?"

48. Superintendent McBreen told Tracey Handling, 'Minersville isn't ready for this."

49. Tracey Handling again requested a copy of the policy or procedure from Defendant Principal Yacobacci and Defendant Superintendent McBreen.

50. Neither Defendants McBreen or Yacobacci, or anyone from Defendant, MSD, has ever produced a copy of any written policy or procedure that indicated that a child must use the restroom which corresponds to the sex listed on that child's birth certificate.

51. In or about August 2015, Defendant Principal Yacobacci gave a private tour of the school to Plaintiff, A.H., and Alivia Handling.

52. During this tour, Defendant Principal Yacobacci, on several occasions referred to A.H. using male pronouns and was corrected by Tracey Handling.

53. Tracey Handling had conversations with Dana Sukeena, District Social Worker, and Defendant Superintendent McBreen, about Principal Yacobacci's repeated use of male pronouns when referring to A.H.

54. Tracey Handling was told to give it some time because A.H.'s situation was all new to them.

55. The Bradbury-Sullivan LGBT Community Center is located at 522 West Maple Street in Allentown, Pennsylvania. Among other things, through their Training Institute, they provide education and training to organizations, including school districts to ensure compliance with discrimination laws, including compliance with Title IX.

56. Liz Bradbury is the Director of the Training Institute at the Bradbury-Sullivan LGBT Community Center.

57. In or around January 2016, Liz Bradbury was in contact with Superintendent McBreen to provide education and training services to the Defendant, Minersville School District.

58. In or about February 2016, Liz Bradbury provided training and education services to Defendant, Minersville School District, on various topics, including transgender students and bathroom use policies that are necessary to be in compliance with Title IX.

59. Defendant Superintendent McBreen was in attendance at the training provided by Liz Bradbury and the Bradbury-Sullivan LGBT Center.

60. Bathroom access issues became more important in A.H.'s daily life as a first grade student since there was no individual bathroom in the classroom.

61. Defendant MSD continued to deny A.H. access to a bathroom that corresponded to her gender identity and forced her to be segregated to a unisex bathroom in the school.

62. In or around March 2016, Tracey Handling contacted Defendant Principal Yacobacci regarding A.H.'s access to women's restrooms while at a field trip scheduled for May 2016.

63. In or around March 2016, Defendant Principal Yacobacci informed Tracey Handling that A.H. would be no be permitted to use a women's restroom on the upcoming field trip.

64. In or around March 2016, Principal Yacobacci informed Tracey Handling that A.H. would have to use a "Family Restroom" provided at the field trip site.

65. In or around March 2016, Principal Yacobacci informed Tracey Handling that if she wanted A.H. to use a women's restroom, Tracey Handling would have to be a chaperone at all such events.

66. Tracey Handling informed Defendant Yacobacci that she would be attending the event to ensure A.H.'s safety and to ensure she is permitted to use the women's bathroom.

67. Defendant Yacobacci told Tracey Handling that she would need three background checks in order to chaperone the field trip.

68. Tracey Handling did not chaperone, but she followed the bus to the field trip location, which was open to the public, to ensure her daughter's safety and ensure that her rights were not being violated.

69. During that field trip, A.H. used the women's restroom facilities, accompanied by her mother, without incident.

70. Defendant, MSD, did not require children who conform to established norms to use a restroom that does not correspond to their self-identified sex.

71. Defendant, MSD, did not require parents of children who do not conform to established norms to chaperone their children on field trips.

72. Defendant, MSD, continued to force Plaintiff, A.H., to use the men's restroom facilities, despite the complaints from Tracey Handling and the education and training conducted by the Bradbury-Sullivan Center.

73. In or about May 2016, A.H., through her parents, filed a complaint of discrimination with the Pennsylvania Human Relations Commission against the Minersville School District.

74. On May 13, 2016, the U.S. Department of Justice, Office of Civil Rights issued a *Dear Colleague* letter giving school districts significant guidance regarding the equal treatment of transgender students.

75. On or about May 27, 2016, Defendant Superintendent McBreen called Tracey Handling to inform her that A.H. would now be able to use the bathroom that corresponds with her gender.

76. Defendant Superintendent McBreen informed Tracey Handling that there would not be any official policy on transgender student access to bathroom facilities and this issue would be handled on a "case by case basis".

77. Plaintiff, A.H, was permitted to use the women's restroom at Minersville Elementary School for the last week of school in the 2015-16 school year.

78. There is no policy or written procedure to protect Plaintiff, A.H., or those similarly situated, from Defendants changing the practice and to deny access to a bathroom facility that corresponds to a student's gender identity.

79. During the 2016-17 school year, Plaintiff, A.H. has been subjected to numerous incidents of discrimination and retaliation at the hands of Defendants, MSD, McBreen, and Yacobacci.

80. In early September 2016, Plaintiff, A.H., suffered an accidental injury to her toe by an older sibling. Tracey Handling wrote to the school requesting permission for A.H. to wear flip-flops because the injury precluded her from wearing any closed toe shoe.

81. In retaliation for exercising their constitutionally protected rights, Defendant Principal Yacobacci reported the Handling family to Children & Youth Services because of the injury to A.H.'s foot.

82. Tracey Handling went to Defendant Principal Yacobacci to ask why he reported them to Children & Youth, and Defendant Yacobacci began screaming at Mrs. Handling, following her out of the office and continued screaming at her, in front of other school district employees and Plaintiff, A.H.

83. In or about January 2017, Plaintiff, A.H., was issued a new birth certificate indicating her sex as "female".

84. Defendant, MSD, continues to discriminate and retaliate against Plaintiff, A.H., by not providing her the necessary assessments required to determine her Individualized Education Plan (IEP) and the proper IEP so that she gets an appropriate education.

85. By mandating that A.H. use the restrooms that do not match her gender identity through Defendant MSD's discriminatory policy and practice, Defendants refuse to recognize Plaintiff's gender identity and effectively erase her gender identity.

86. By mandating and relegating A.H. to use single-stall unisex restrooms, Defendants isolated and segregated Plaintiff, A.H., based on her sex, gender identity, and transgender status.

87. Defendants have marginalized and stigmatized Plaintiff, A.H., causing her great anxiety and distress.

88. As a result, Plaintiff, A.H., has experienced and continues to experience the harmful effects of being segregated from, and treated differently than, her classmates of the same gender identity, including lowered self-esteem, embarrassment, humiliation, social isolation, and stigma.

89. These harmful effects have increased A.H.'s symptoms of the gender dysphoria, including depression and anxiety.

CLAINS FOR RELIEF

COUNT I
VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972
20 U.S.C. § 1681, *et seq.*

A.H.
v.
MINERSVILLE SCHOOL DISTRICT

90. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if fully set forth at length herein.

91. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."20 U.S.C. § 1681(a).

92. Under Title IX, discrimination "on the basis of sex" encompasses discrimination based on an individual's gender identity, transgender status, and gender expression, including nonconformity to sex gender-based stereotypes.

93. Title IX's prohibition on sex discrimination extends to "any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient of federal funding." 34 C.F.R. § 106.31.

94. The Defendant, MSD is a political subdivision of the Commonwealth of Pennsylvania.

95. Defendant, MSD, is the recipient of federal financial assistance and is therefore subject to Title IX and its implementing regulations, 34 C.F.R. § 106.31.

96. By adopting and/or enforcing a policy or practice prohibiting A.H., a transgender girl, from accessing and using female-designated restrooms or single-

occupancy restrooms, Defendant MSD has discriminated against A.H. in her enjoyment of MSD's educational programs and activities by treating her differently from other female students based on her gender identity, the fact that she is transgender, and her nonconformity with sex stereotypes.

97. Defendant MSD has discriminated against Plaintiff, A.H., on the basis of sex in violation of title IX and had thereby denied A.H. the full and equal participation in, benefits of, and right to be free from discrimination in the educational opportunities offered by Defendant, MSD.

COUNT II

DEPRIVATION OF EQUAL PROTECTION IN VIOLATION OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

A.H.
v.
Minersville School District, Carl McBreen, and James Yacobacci

98. Plaintiffs incorporate by reference the preceding paragraphs of this Complaint as if fully set forth at length herein.

99. The Fourteenth Amendment to the United States Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

100. Each of the Defendants is a "person acting under the color of state law" for the purposes of 42 U.S.C. § 1983.

101. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on sex, including gender, gender identity, transgender status and nonconformity to sex-based or gender-based stereotypes, as well as discrimination based

on transgender status alone, is presumptively unconstitutional and, therefore, subject to heightened scrutiny.

102. Defendant MSD's policies and/or practices discriminate against transgender students on the basis of sex, including gender, gender identity, transgender status and non-conformity to sex-based or gender-based stereotypes, and on the basis of transgender status alone.

103. Defendant MSD's policies and/or practices treat transgender students differently than other students who are similarly situated.

104. Defendant MSD's policies and/or practices permit students to access restrooms consistent with their gender identity, but transgender students are banned from restrooms consistent with their gender identity.

105. By enforcing a policy and/or practice of prohibiting A.H., a transgender girl, from accessing female designated restrooms at school or at school related functions, and requiring that she use male-designated restrooms or single-occupancy restrooms, Defendants have discriminated against A.H. in her enjoyment of MSD's educational programs and activities by treating her differently than other female students based on her gender identity, the fact that she is transgender, and her nonconformity to female stereotypes, thereby denying her the full participation in, benefits of, and right to be free from discrimination in the educational opportunities offered by MSD, on the basis of sex and transgender status, in violation of the Equal Protection Clause.

106. Defendant MSD's bathroom policy targeted a suspect class of students, specifically transgender students.

107. Defendants MSD, McBreen, and Yacobacci have treated Plaintiff, A.H. differently from other student who are similarly situation on the basis of her transgender status.

108. Plaintiff, A.H., has been distinguished by governmental action from those whose gender identities are congruent with their assigned sex.

109. Plaintiff, A.H., is the only student who was not allowed to use the common restrooms that were consistent with their gender identity.

110. Defendant MSD's bathroom policy/practice and the enforcement of it is neither substantially related to any important government interest, nor does it even advance any legitimate government interest.

111. Defendants are liable for their violation of Plaintiff's Fourteenth Amendment rights under 42 U.S.C. § 1983.

112. Plaintiff has been, and continues to be, injured by Defendants' conduct and has suffered damages as a result.

113. MSD's discrimination against transgender students based on sex denied A.H. the equal protection of the laws, in violation of the Equal Protection Clause of the Fourteenth Amendment.

114. Transgender people have suffered a long history of extreme discrimination in Pennsylvania and across the country, and continue to suffer such discrimination to this day.

115. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have

largely been unable to secure explicit local, state, and federal protections to protect them against discrimination.

116. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

117. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

118. Gender identity generally is fixed at an early age and is highly resistant to change through intervention.

119. For the foregoing reasons, discrimination based on gender identity status alone is entitled to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment and Plaintiff is entitled to relief against all Defendants on that basis as well.

120. At all times relevant hereto, Defendant, Minersville Elementary School was acting under color of state law.

121. Under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, Plaintiff, A.H., has a right to be free from discrimination based upon gender.

122. Plaintiff, A.H., experienced discrimination at the hands of Defendant, Minersville Elementary School, based on gender, based on her biological differences, and based on gender nonconformity.

123. The Minersville School District is the policy maker for all Minersville schools, affecting every student, including Plaintiff, A.H.

124. Defendants required Plaintiff, A.H., a transgender girl, to use separate restrooms because she did not conform to the Defendant's expectations of gender norms, thereby treating A.H. differently from similarly situated students, based on her gender.

125. Defendants required Plaintiff, A.H., a transgender girl, to use a restroom that did not conform to her gender identity, because she did not conform to the Defendants' expectations of gender norms, thereby treating A.H. differently from similarly situated students, based on her gender.

126. Defendants required Plaintiff, A.H., a transgender girl, to be singled out and to use a bathroom that did not conform to her gender identity after the bathroom had been cleared and searched for other occupants, all while being observed by her classmates, because she did not conform to the Defendant's expectations of gender norms, thereby treating A.H. differently from similarly situated students, based on her gender.

127. The discrimination by Defendants was applied to Plaintiff, A.H., on the basis of her sex, and therefore was gender-based.

128. Parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action. *United States v. Virginia*, 518 U.S. 515, 531 (1996).

129. The burden of justification is demanding and it rests entirely on the State. *Id.* at 533.

130. To justify their discriminatory actions, Defendants must show that their policy served "important governmental objectives and that the discriminatory means employed" are "substantially related to the achievement of those objectives". *Id.*

131. The justification for the Defendants' actions "must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *Id.*

132. Defendants' discrimination against Plaintiff, A.H., based on her gender, did not serve an "important governmental objective".

133. Defendants' discrimination against Plaintiff, A.H., based on her gender, was not "substantially related to the achievement of those objectives".

134. Defendants' discrimination against Plaintiff, A.H., based on her gender, relied on overbroad generalizations about the talents, capacities, and/or preferences of Plaintiff, A.H.

135. Defendants' discrimination against Plaintiff, A.H., based on her gender, is not substantially related to any important governmental interest.

136. Defendants' discrimination against Plaintiff, A.H., based on her gender, is not rationally related to any legitimate governmental interest.

137. Defendants' discrimination against Plaintiff, A.H. based on her gender, denies her the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution.

138. Defendants' are liable for the violations of Plaintiff A.H.'s Fourteenth Amendment rights under 42 U.S.C. § 1983.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter a Judgment in her favor and against Defendants on all claims and grants the following relief:

A. Enter a declaratory judgment that the actions of Defendants complained of herein are in violation of the Equal Protection Clause of the Fourteenth Amendment to United States Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.*;

B. Issue preliminary and permanent injunctions directing the Defendants to:

1. Permit A.H. to use the women's restroom while at school and at any school function for the remainder of her time as a student in Defendants' school, and otherwise treat her as a girl in all respects for the remainder of her time as a student as Defendants' school, or until the resolution of this lawsuit, whichever is later;
2. Treat Plaintiff as a girl in all respects for the remainder of her time as a student in Minersville School District;
3. Clarify existing Minersville School District policies prohibiting discrimination on the basis of sex apply to discrimination based on gender identity, transgender status, and nonconformity to sex stereotypes;
4. Provide training to all district level and school-based administrators, and school board members, on their obligations under Title IX and the Equal Protection Clause regarding the nondiscriminatory treatment of transgender and gender nonconforming students; and

5. Ensure that all district-level and school-based administrators, including school board members, responsible for enforcing Title IX, including Defendant MSD's designated Title IX coordinator(s), are aware of the correct and proper application of Title IX to transgender and gender nonconforming students.

C. Award Compensatory Damages for the intentional violation of Title IX in an amount determined by the Court to fully compensate Plaintiff for the emotional distress and other damages that have been caused by Defendants' conduct alleged herein;

D. Award Plaintiff's reasonable costs and attorney's fees pursuant to 42 U.S.C. §1988; and

E. Grant such other relief in favor of the Plaintiff as the Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed.R.Civ.P. 38(b), the Plaintiff hereby demands a trial by jury.

COHEN, FEELEY, ALTEMOSE & RAMBO, P.C.

By: ______________________________

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DATED: March 1, 2017

VERIFICATION

I, Jason D. Schiffer, Esq., state that I am the Attorney for the Plaintiff in the within action and verify that the Complaint is legal in nature, that we are familiar with the facts contained therein and that the statements within are true and correct to the best of our knowledge, information and belief; and further state that as Attorney for the Plaintiffs, I am best qualified to execute this verification to the foregoing Complaint. I understand that any false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

JASON D. SCHIFFER, ESQ.

DATED: March 1, 2017